



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1997

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-2552

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 110881.

The City of Houston Fire Department (the "department"), which your office represents, received requests for "a copy of [the department's] 911 audiotape regarding calls for service made from 2911 Sycamore Springs (Elm Creek Apts.) on Tuesday night, September 9, 1997," and a variety of information concerning emergency service in the Kingwood community. In response to the request, you submitted to this office for review the information you assert is responsive. You have released one page of the information responsive to one request. However, you claim that the remaining submitted information is excepted from required public disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that if the requested records overlap with any information which was the subject of our previous rulings in Open Records Letter Nos. 97-2408 (1997) and 97-1326 (1997), then the department should withhold or release the information as directed in those rulings.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

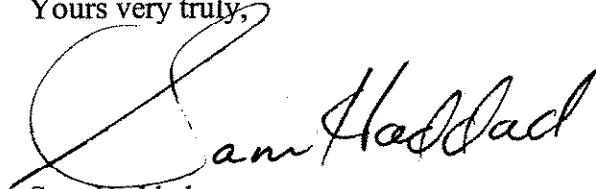
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to litigation for purposes of section 552.103(a). See *In re Larry Lane*, No. 97-21429 (270th Dist. Ct., Harris County, Tex., April 23, 1997). Therefore, the requested records may be withheld.¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a large, stylized circular flourish.

Sam Haddad
Assistant Attorney General
Open Records Division

¹If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

SH/rho

Ref.: ID# 110881

Enclosures: Submitted documents and audio-tape

cc: Ms. Marisa Hurst, Assignments
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